

Judge Orders CIA Director Gates to

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POST

Testify for Defense in George

Case

A federal judge yesterday rejected an attempt by CIA Director Robert M. Gates to avoid testifying at the trial of an old colleague, former CIA spy chief Clair E. George.

Saying Gates "is up to his eyeballs in his knowledge" of the Iran-contra affair, U.S. District Judge Royce C. Lamberth expressed annoyance at the last-minute attempt Monday night to quash a subpoena directing Gates to appear as a defense witness.

"There were only two people above George, and one is dead," Lamberth said in response to a claim by Gates that his testimony was not needed. "What Mr. Gates knew can be very critical to this defense."

The two people Lamberth was talking about were the late CIA director William J. Casey and Gates, who was deputy director and No. 2 official at the agency in 1986 before the Iran-contra scandal broke. George was deputy director for operations, in charge of the agency's clandestine service.

Gates, now expected to appear early next week, could face rough questioning by both sides in the trial.

Defense lawyers announced yesterday that they consider him "a hostile witness" because of his reluctance to appear. According to court papers, they have dropped an earlier request that he testify "about Mr. George's good character." George was a chief rival of Gates when Gates was promoted to the No. 2 job at the agency and, according to CIA insiders, there is no love lost between the two men.

Iran-contra prosecutors, on other hand, have always regarded Gates as "a subject" of their investigation and said in previous court filings

that if he appears as a witness, they might try to impeach some of his Iran-contra testimony before Congress.

After months of negotiations with CIA lawyers, George's attorneys issued a subpoena Saturday, calling for Gates's appearance yesterday, the day they began presenting their defense. The trial is in its fourth week.

The Justice Department stepped in on Gates's behalf Monday night, contending that George's lawyers had failed to justify "interference with the work of an Executive Branch agency at its highest levels." Departmental lawyers complained that chief defense counsel Richard A. Hibey had "failed to identify the particular areas of testimony he seeks, or how any such information is material and favorable to [George's] defense."

Defense lawyer Gordon Coffee told the court at a special hearing late yesterday that Gates was important to efforts to knock down charges that George lied to congressional and grand jury investigators and obstructed their inquiries.

George's main line of defense has been that he was too busy with other CIA operations to have been aware of the Iran-contra details he is accused of lying about.

Gates has similarly professed inattention to the Iran-contra operations, which involved secret sales of arms to Iran and covert resupply of the contra rebels in Nicaragua.

Offering one example of why Gates' testimony is needed, Coffee said that the CIA director in his Senate confirmation testimony last fall acknowledged meeting with former CIA Central American task force chief Alan D. Fiers nine times in the spring and summer of 1986 to discuss the situation in Nicaragua.

Gates insisted in his Senate testimony that at none of those meetings did Fiers tell him he was working with then-White House aide Oliver L. North and the "private benefactors" North had enlisted to supply the contra rebels with munitions at a time such aid was barred by Congress.

Coffee pointed out that George has made somewhat the same argument and that Gates's expected repetition of his previous testimony before the jury "buttresses our case."

The judge took umbrage at the suggestion that Gates was too important and too busy an official to be required to appear in court without a meticulous explanation of his

importance to the case. Lamberth told Justice Department lawyer David Anderson he was not impressed with the precedents cited, such as one quashing a subpoena for President Ronald Reagan's appearance at North's 1989 trial.

"This is a criminal case," Lamberth emphasized. "All the criminal cases you cited refer to the president. Let me tell you, Mr. Gates is in a lot different position than President Reagan."

Lamberth said courts have been reluctant to require top government officials to testify in cases they know little or nothing about. He said that was not the situation here.

"Mr. Gates is up to his eyeballs in

his knowledge about the subject," the judge said, pointing out that Gates has been placed at a number of important meetings and briefings in testimony thus far.

The prosecution rested its case at midday yesterday after a reading from an April 24, 1987, deposition George gave the Senate and House committees investigating Iran-contra.

In the deposition, George recalled in graphic terms how he had met and immediately raised questions about Iran-contra middleman Richard V. Secord. One of the counts against George is that just a few months earlier, he failed to tell a different congressional committee he had ever met Secord.